

**FRANK AND
STATE**

**COMPLETE
BRIEFS**

**TO SUPREME
COURT**

State's Right to
Enforce

Own Criminal Laws
Up-

held by Hugh M.
Dorsey

and Warren Grice.

***SAY DISORDER
CHARGES***

***ARE GREATLY
ENLARGED***

Frank's Brief Filed Satur- day in Washington, Pro- nounces Trial a Travesty of Justice.

Asserting the right of every State of the Union to make and enforce its own Criminal laws, free from interference or supervision by the Federal Courts, and citing the decisions of the Supreme Court of the United States itself to support this contention, the brief of the State of Georgia in the Leo M. Frank Appeal to the Supreme Court was completed Saturday night after several weeks of persistent work by Solicitor General Hugh M. Dorsey and Attorney General Warren Grice.

Within a few hours after the completion of the brief Mr. Dorsey left for Washington. The rules of the Supreme Court, requiring that a printed Brief be filed, Mr. Dorsey took with him

the first Copy of the Brief off the Press of the Official State Printer —Charles P. Byrd.

Attorney General Grice will leave Sunday for Washington, and he and Mr. Dorsey will file the Brief in the Supreme Court on Monday. The Brief of Counsel for Leo M. Frank was filed on Saturday. The Hearing before the Supreme Court is set for next Tuesday.

Upholds Rights of State.

The brief is a voluminous one, containing eighty-five pages and citing over 200 judicial decisions, not only from Georgia and the United States Supreme Court, but also from many other States, to uphold the contention that the Frank verdict is legal, and should stand.

The Principal Argument of the State is that the absence of Frank at the verdict, from waiver by his Counsel, was not a denial to him of any inherent right, and in no way injured him, but that at most it was a mere technical irregularity, and that the State of Georgia has the sole right to decide what the effect of such an irregularity shall be, and whether or not it shall be the basis for setting aside the verdict.

The incorporation of the due process clause in the fourteenth Amendment does not result in an overturning of well settled principles and established usages prevailing in States, nor to deprive the States of the power to establish other Systems of law and procedure, or alter the same at their will," reads one of the Principal Subheads of the Brief.

On this subject, the Brief quotes many United States decisions to show that "due process of law" was not denied Frank in allowing his absence at the rendition of the verdict. One of these was the famous *Hurtado v. California* Case, which held that a State could take away the right of indictment by a Grand Jury in felony Cases if it desired, provided its laws apply to all citizens alike, thus securing to them "due process of law."

Disorder Greatly Enlarged.

With reference to Frank's charges of disorder at the trial, the State's Brief calls attention to the fact that these same charges were embodied in the Bill of Exceptions on the Appeal to the Georgia Supreme Court for a new trial, and that they were passed on by the Court when the trial was denied.

The Brief stresses the fact that "rebutting proof" was submitted by the State which disproved the Disorder Charges by Frank and that this very important "rebutting proof" is not included in the Record which is submitted to the Supreme Court of the United States by Frank in his Appeal for the Writ of Habeas Corpus. It is stated also in the Brief that these charges of disorder are greatly exaggerated and enlarged by Frank in his petition.

Claim State's Jurisdiction.

On the question of the jurisdiction, the brief says: "The Supreme Court of Georgia had jurisdiction to determine whether Frank's Counsel could waive his presence, and even if this Court should think that ruling error, Habeas Corpus cannot correct it." An extended line of decisions is quoted in support of this Argument. The closing paragraphs of the Brief are as follows:

"In view of the foregoing Authorities, we respectfully submit that the Supreme Court of the United States should in this Case determine that on a trial for murder in a State Court the due process of law clause of the fourteenth Amendment does not guarantee the right to be present to the Defendant, when the verdict was returned; and that this Court ought to decide that he cannot in any event now be discharged in view of the Final Judgment refusing a new trial in the Case where the Defendant did not make the fact of his absence, when the verdict was returned, a ground of the motion, nor claim that the rendition of the verdict in its absence was the denial of right guaranteed by the Federal Constitution.

"The above ought to follow more readily, especially since this Court has already refused to grant a Writ of Error in a Case

where the alleged Jurisdictional question was presented in a motion filed at a time not authorized by the practice of the State where the trial took place.”

“And certainly, Habeas Corpus is not an available remedy” under the facts disclosed.

“All of which is respectfully submitted.”

“WARREN GRICE,”

“HUGH M. DORSEY,

“Counsel for Appellee.”

FRANK TRIAL DECLARED TRAVESTY BY DEFENSE

Washington, February 20—Attorneys for Leo M. Frank, sentenced to death

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for the murder of Mary Phagan, the Atlanta Factory girl, filed in the Supreme Court today briefs in Frank’s Appeal from the

Georgia Federal Court's refusal to release him in Habeas Corpus Proceedings. The Appeal will be argued next week.

They contend the trial Court lost Jurisdiction by abdicating its functions from fear of mob violence, and by arranging for Frank to remain out of Court when the verdict was announced.

For the first time, the Attorneys declare Frank does not contend he cannot be held for a new trial if the present death sentence is set aside.

The brief declares Frank's Counsel at the trial could not waive his right to be present when the verdict was rendered. It is argued if he could be absent then, he could be absent during the entire trial.

"When the jurors returned into the Courtroom," the brief continues, "and found the prisoner absent, with none to look into their faces but the excited multitude, and when, after the first Juror had been polled, the tumult of Applause and the Cheers that were bellowed were so resounding as to prevent the responses of the Jurors as they were polled from being heard ten feet away, is it possible to believe that those Jurors acted as free moral Agents, or that they were not subjected to a species of duress that swept from their minds every thought save that of personal jeopardy?"

"A trial amid such concomitants is a mere travesty. It is not a legal proceeding."

Being out of Court, Frank was unable to raise the question as to the denial of his rights under the Federal Constitution, the brief contends. Once he had been denied a right, unavailing efforts to obtain a new trial could not act to make the Judgment legal, it added.

The Brief concludes:

"In the present Case, the Superior Court of Georgia has Jurisdiction over the Appellant after his indictment, and down to the later stages of his trial. The verdict and all subsequent proceedings being nullities, he is entitled to his discharge from

the void Judgment and to be relieved from the void Sentence of Death. He does not, however, contend that he cannot be held for further trial under the indictment.”
